

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

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|---------------------------------|---|----------------------|
| GENE CLARK, Register No. 42716, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 05-4080-CV-C-NKL |
| |) | |
| C.O. I KOON, et al., |) | |
| |) | |
| Defendants. |) | |

ORDER

On August 17, 2006, the United States Magistrate Judge recommended granting defendants' motions for summary judgment and that plaintiff's complaint be dismissed. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on September 5, 2006. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Plaintiff's continued assertion that there is a videotape of the alleged use-of-force incident is unsupported by the evidence. Plaintiff's request to reopen discovery is denied.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that the Magistrate Judge's August 17, 2006 Report and Recommendation is adopted [60]. It is further

ORDERED that defendants' motions for summary judgment are granted and plaintiff's claims are dismissed [48, 49].

/s/

NANETTE K. LAUGHREY
United States District Judge

Dated: September 22, 2006
Jefferson City, Missouri